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Docket No.: 220758US0PCT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

ATTORNEYS AT LAW

RE: Application Serial No.: 10/070,911
Applicants: Florence L'ALLORET, et al.
Filing Date: March 13, 2002
For: COMPOSITION WITH AN OPTICAL EFFECT,
ESPECIALLY COSMETIC COMPOSITIONS
Group Art Unit: 1618
Examiner: FUBARA, B.

SIR:

Attached hereto for filing are the following papers:

NEW APPEAL BRIEF

Our check in the amount of _____ is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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DOCKET NO: 220758US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
FLORENCE L'ALLORET : EXAMINER: FUBARA, B.
SERIAL NO: 10/070,911 :
FILED: MARCH 13, 2002 : GROUP ART UNIT: 1618
FOR: COMPOSITION WITH AN :
OPTICAL EFFECT, ESPECIALLY
COSMETIC COMPOSITIONS

APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This brief is submitted in response to the rejection dated May 23, 2005.

REAL PARTY OF INTEREST

The real party of interest herein is L'Oréal of Paris, France.

RELATED APPEALS AND INTERFERENCES

An appeal of a final office action is pending in U.S. application serial no. 10/070,910, identified by Appellants as a related case in the filing of September 2, 2003 and cited by the Office in a provisional obviousness-type double patenting rejection. Otherwise, to the best of Appellants' knowledge, there are no other appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.

STATUS OF CLAIMS

Claims 34-69 are active in this application.

STATUS OF AMENDMENTS

No outstanding amendments are present in this case.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention as set forth in Claim 34 (Appendix I) is directed to a cosmetic composition comprising an aqueous phase with at least one compound with an optical effect and a polymer comprising

- (1) water-soluble units bearing before reaction at least two reactive sites
- (2) LCTS units, bearing before reaction at least one reactive site, consisting of N-vinylcaprolactam homopolymers or copolymers in a proportion by weight from 5 to 70%

(3) wherein the polymer is a block polymer comprising water-soluble blocks alternating with LCST blocks or the polymer is a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts

As set forth in the specification on page 2, lines 19-26, the aim of the present invention is to satisfy: :

The need for a composition with an optical effect, which gives, after application deposits or films with excellent staying power even under humid and/or hot atmospheric conditions. The said composition that can provide a wide range of textures, in particular at room temperature, allows an easy application.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The first rejection to be reviewed on appeal is of Claims 34, 35, 37-50, 57-59 and 61 under 35 U.S.C. 102(b) in view of U.S. 5,730,966 ("Torgerson").

The second rejection to be reviewed on appeal is of 1-17, 22-25, and 33 under the doctrine of obviousness-type double patenting in view of U.S. patent no. 6,689,856. While there are additional provisional rejections under the doctrine of obviousness-type double patenting over co-pending applications, as the rejections are only provisional, review is not requested at this time.

ARGUMENT

Rejection No. 1

It is well-settled law that the standard set forth in § 102(b) is that of novelty. Lack of novelty, i.e., anticipation requires strict identity between the claimed invention and that disclosed in the prior art reference. To anticipate a claim, a single prior art source must contain all of the essential limitations of the claim *Verdegaal Bros. v. Union Oil Co. of California* 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Put very simply, the claimed invention is not described by Torgerson with sufficient specificity as to constitute anticipation under U.S. patent law and therefore the rejection under 35 U.S.C. § 102(b) should be REVERSED.

In the response filed on February 3, 2005 addressing the Torgerson rejection, it was explained in great detail why Torgerson cannot anticipate the claimed invention. In particular, it was explained that the claims require water-soluble units and N-vinylcaprolactam homopolymers or copolymers as LCST units in a proportion by weight from 5 to 70% **AND** that the polymer **is**

(a) a block polymer comprising water-soluble blocks alternating with LCST blocks;

OR

(b) a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts.

It was also explained that while Torgerson describes any number of possible polymers, Torgerson does not describe with sufficient specificity the polymers as claimed.

In reply to these arguments, the Office returned the following (Office Action of May 23, 2005, 2005 at pp.3):

Torgerson discloses graft copolymers that can also be made by free radical polymerization (column 13, line43) and is an oil-in-

water- silicone emulsion, the monomers selected from the list
in column 10, lines 20-45. .

The Examiner's rationale that one could have picked from any number of monomers in Torgerson is not tenable. The Examiner has failed to recognize that Torgerson does not describe a block polymer as claimed nor provides any direction to the graft polymer which is also an option as claimed. Therefore, on this basis, the rationale for maintaining the rejection was not proper.

Furthermore, as set forth in the Patent Office Manual of Patent Examining Procedure (MPEP) section 2131.02:

When the compound is not specifically named, but instead it is necessary to select portions of teachings within a reference and combine them, e.g., select various substituents from a list of alternatives given for placement at specific sites on a generic chemical formula to arrive at a specific composition, anticipation can only be found if the classes of substituents are sufficiently limited or well delineated

Here, Torgerson simply does not describe, with sufficient specificity, the selection of monomers of a polymer in a cosmetic composition where the polymer is (a) a block polymer comprising water-soluble blocks alternating with LCST blocks; OR (b) a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts.

Torgerson describes water or alcohol dispersible elastomeric copolymers useful in cosmetic applications. The copolymers of Torgerson contain randomly polymerized monomers which provide repeating units A and B (col. 3, of Torgerson). Furthermore, Torgerson generically describes each monomer and the combinations that would result from selecting any particular monomer from each group is enormous (see cols. 2-3 and 8-9). There is simply no direction in Torgerson to select polymers that control "rheology of aqueous compositions as a function of temperature, while at the same time maintaining a

certain level of transparency for the composition” as set forth in the present specification on page 4, lines 17-22.

Rather, Torgerson is concerned with selecting monomers based on different polymer properties, i.e., flexibility, elasticity, solubility, glass transition temperatures (T_g), molecular weights, and strength, which are properties useful for hair styling compositions (see col. 1, line 64 to col. 2, line 3; and col. 4, lines 54-55).

More specifically, Torgerson is concerned with preparing and utilizing graft copolymers:

The present invention relates to a water or alcohol soluble or dispersible thermoplastic elastomeric copolymer having a **backbone and two or more polymeric pendant side chains . . .** (col. 2, lines 37-39, emphasis added).

The copolymers of the present invention, can also be referred to as "**graft copolymers**" because they can be prepared from the copolymerization of monomer units and macromonomer units. ***In other words, the macromonomer is "grafted" or incorporated into the copolymer.*** (col. 4, lines 59-63, emphasis added).

Further, Torgerson describes the graft copolymers as:

characterized in having an elastomeric or flexible backbone and rigid, thermoplastic, hydrophilic side chains. (col. 4, lines 55-56)

The first option in Claim 34, which is defined as **a block copolymer** with alternating units of water-soluble and LCST blocks, is clearly different than the **grafted polymers** described by Torgerson. Therefore, even if one could simply pick and choose the appropriate monomers, the monomers would not be arranged as in the present claims following the description in Togerson.

Concerning the second option in Claim 34, which is defined as a water-soluble backbone with LCST grafts, this polymer is certainly not described in Torgerson because at col. 5, line 48-62 Torgerson describes:

The copolymers of the present invention are formed from the copolymerization of randomly repeating A and B units . . . In typical embodiments of these copolymers, **the backbone is primarily derived from the ethylenically unsaturated portion of the A monomer unit and the ethylenically unsaturated portion of the B macromonomer unit. *The side chains are derived from the non-copolymerized portions of the macromonomer.***

Where is there a description for a water-soluble backbone with LCST grafts?

Certainly not here.

Further, Torgerson describes that the water-soluble monomers that impart the polymer with water-solubility, see again col. 4, lines 55-56 of Torgerson: “an elastomeric or flexible backbone and rigid, thermoplastic, hydrophilic side chains.”

In view of the above reasons alone, the rejection based on Torgerson should be reversed.

So amongst the broad and generic disclosure provided in Torgerson, one must first select a combination of water-soluble units and LCST units, then they must select a N-vinylcaprolactam as an LCST unit, then they must select an amount of LCST units to be within 5 to 70%, then they must choose one arrangement from **(a)** a block polymer comprising water-soluble blocks alternating with LCST blocks; **OR (b)** a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts.

Putting together the various possible options provided in Torgerson would result in thousands of possible combinations and even when using the present claims as a guide, which clearly the Office has done here, none of these combinations are the claimed **block**

copolymer with alternating units of water-soluble and LCST blocks. Moreover, there is nothing in Torgerson which would lead one to a graft polymer whose **backbone is formed from water-soluble units** and bears LCST grafts, which is also an option in the claims.

Torgerson must disclose a more specific, limited teaching to chose those polymers as claimed. Torgerson fails to do so and as such does not provide an anticipating disclosure to present claims.

Dependent Claims 35, 37-50, 57-59 and 61 all contain further limitations that establish their patentability apart from those in independent Claim 34

Because the reference does not meet the very stringent requirements necessary for a reference to qualify as anticipatory under 35 U.S.C. § 102, the Examiner's rejection should be REVERSED.

Rejection No. 2

The rejection under of Claims 1-17, 22-25 and 33 under the doctrine of obviousness-type double patenting in view of Claims 1-39 of U.S. patent no. 6,689,856 is unsustainable for at least two reasons.

First, the Office has failed to provide any basis for the conclusion that “although the conflicting claims are not identical, they are not patentably distinct from each other because the claims overlap and future intended use is not critical in composition claim.” (page 6 of the Office Action o November 30, 2004). As the burden of establishing a rejection is with the Office and the Office has not done so, the rejection should be withdrawn. See MPEP 2142:

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

Second, the claims of U.S. patent no. 6,689,856 do not include at least one compound with an optical effect and therefore Claims 1-17, 22-25 and 33 would not have been obvious.

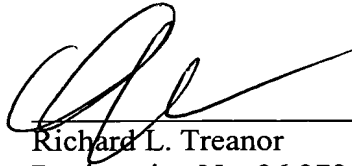
CONCLUSION

Accordingly, in view of the above remarks and reasons explaining the patentable distinctness of the presently appealed claims over the prior art, Appellants request that the Examiner's rejections be REVERSED.

Respectfully submitted,

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APPENDIX 1 (CLAIMS)

Claims 1-33 (Cancelled).

34. (Previously Presented) A cosmetic composition comprising an aqueous phase, said aqueous phase comprising at least one compound with an optical effect and a polymer comprising water-soluble units and units having in water a lower critical solution temperature LCST, the heat-induced demixing temperature in aqueous solution of said units with an LCST being from 5 to 40°C for a concentration by mass in water of from 1% to 25% of said units, wherein the polymer is a block polymer comprising blocks consisting of water-soluble units alternating with units with an LCST; or the polymer is a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts.

35. (Previously Presented) The cosmetic composition according to Claim 34, wherein the polymer is partially crosslinked.

36. (Previously Presented) The cosmetic composition according to Claim 34, wherein the heat-induced demixing temperature in aqueous solution of the units with an LCST of the polymer is from 10 to 35°C for a concentration by mass in water of from 1% to 25% of said units.

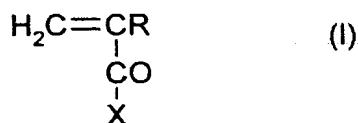
37. (Previously Presented) The cosmetic composition according to Claim 34, wherein the water-soluble units are obtainable by polymerization, polycondensation, natural polymers, modified natural polymers, or combinations thereof.

38. (Previously Presented) The cosmetic composition according to Claim 37, wherein the water soluble units are obtainable by polymerization.

39. (Previously Presented) The cosmetic composition according to Claim 38, wherein the water soluble units are obtainable by free-radical polymerization.

40. (Previously Presented) The cosmetic composition according to Claim 38, wherein the water soluble units are obtainable by polymerization of at least one monomer selected from the group consisting of:

- (a) (meth)acrylic acid;
- (b) vinyl monomers of formula (I):



wherein

R is H, -CH₃, -C₂H₅ or -C₃H₇; and

X is

(i) alkyl oxide of -OR', wherein R' is a linear or branched, saturated or unsaturated hydrocarbon-based radical containing from 1 to 6 carbon atoms, optionally substituted with at least one halogen atom; a sulphonic group (-SO₃⁻), a sulphate group (-SO₄⁻), a phosphate group (-PO₄H₂); a hydroxyl group (-OH); a primary amine group (-NH₂); a secondary amine group (-NHR₁), a tertiary amine group (-NR₁R₂) or a group quaternary amine (-N⁺R₁R₂R₃) group, wherein R₁, R₂ and R₃ are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon atoms, with the proviso that the sum of the carbon atoms of R' + R₁ + R₂ + R₃ does not exceed 7; or

(ii) -NH₂, -NHR₄ and -NR₄R₅ groups wherein R₄ and R₅ are, independently of each other, linear or branched, saturated or unsaturated hydrocarbon-based radicals comprising 1 to 6 carbon atoms, with the proviso that the total number of carbon atoms of R₄ + R₅ does not exceed 7, and wherein R₄ and R₅ can be optionally be substituted with one or

more of a halogen atom; a hydroxyl group (-OH); a sulphonic group (-SO₃⁻); a sulphate group (-SO₄⁻); a phosphate group (-PO₄H₂); a primary amine group (-NH₂); a secondary amine group (-NHR₁), a tertiary amine group (-NR₁R₂) and quaternary amine (-N⁺R₁R₂R₃) group, wherein R₁, R₂ and R₃ are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon atoms, with the proviso that the sum of the carbon atoms of R₄ + R₅ + R₁ + R₂ + R₃ does not exceed 7;

(c) maleic anhydride;

(d) itaconic acid;

(e) vinyl alcohol of formula CH₂=CHOH;

(f) vinyl acetate of formula CH₂=CH-OCOCH₃;

(g) N-vinyl lactams such as N-vinylpyrrolidone, N-vinylcaprolactam and N-butyrolactam;

(h) vinyl ethers of formula CH₂=CHOR₆ in which R₆ is a linear or branched, saturated or unsaturated hydrocarbon-based radical containing from 1 to 6 carbon atoms;

(i) water-soluble styrene derivatives;

(j) dimethyldiallylammonium chloride; and

(k) vinylacetamide.

41. (Previously Presented) The cosmetic composition according to Claim 37, wherein the water-soluble units of the polymer are totally or partially polycondensates, natural polymers or modified natural polymers comprising a component selected from the group consisting of:

(a) water-soluble polyurethanes;

(b) xanthan gum;

(c) alginates and derivatives thereof;

(d) cellulose derivatives;

(e) galactomannans and derivatives thereof; and

(f) polyethyleneimine.

42. (Previously Presented) The cosmetic composition according to Claim 34, wherein the water-soluble units of the polymer have a molar mass ranging from 1000 g/mol to 5 000 000 g/mol when they constitute the water-soluble backbone of a graft polymer, or a molar mass ranging from 500 g/mol to 100 000 g/mol when they constitute a block of a block polymer.

43. (Previously Presented) The cosmetic composition according to Claim 34, wherein the units with an LCST of the polymer are selected from the group consisting of:

(a) polyethers;

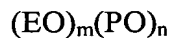
(b) polyvinyl methyl ethers;

(c) polymeric N-substituted acrylamide derivatives containing units with an LCST;

(d) copolymeric N-substituted acrylamide derivatives containing units with an LCST; and

(e) polyvinylcaprolactam and vinylcaprolactam copolymers.

44. (Previously Presented) The cosmetic composition according to Claim 34, wherein the units with an LCST comprise polypropylene oxide (PPO)_n wherein n is an integer from 10 to 50, or random copolymers of ethylene oxide (EO) and propylene oxide (PO), represented by the formula:



wherein m is an integer ranging from 1 to 40, and n is an integer ranging from 10 to 60.

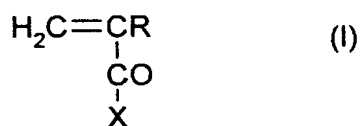
45. (Previously Presented) The cosmetic composition according to Claim 44, wherein the molar mass of the units with an LCST of the polymer is from 500 to 5300 g/mol.

46. (Previously Presented) The cosmetic composition according to Claim 45, wherein the units with an LCST of the polymer comprise a polymeric or copolymeric N-substituted acrylamide derivative containing units with an LCST.

47. (Previously Presented) The cosmetic composition according to Claim 46, wherein the units with an LCST of the polymer comprise at least one member selected from the group consisting of:

- (a) poly-N-isopropylacrylamide,
- (b) poly-N-ethylacrylamide, and
- (c) a copolymer of N-isopropylacrylamide or N-ethylacrylamide with a vinyl monomer selected from the group consisting of:

- (i) vinyl monomers of formula (I):



wherein

R is H, -CH₃, -C₂H₅ or -C₃H₇; and

X is

alkyl oxide of -OR', wherein R' is a linear or branched, saturated or unsaturated hydrocarbon-based radical containing from 1 to 6 carbon atoms, optionally substituted with at least one halogen atom; a sulphonic group (-SO₃⁻), a sulphate group (-SO₄⁻), a phosphate group (-PO₄H₂); a hydroxyl group (-OH); a primary amine group (-NH₂); a secondary amine group (-NHR₁), a tertiary amine group (-NR₁R₂) or a group quaternary amine (-N⁺R₁R₂R₃) group, wherein R₁, R₂ and R₃ are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon

atoms, with the proviso that the sum of the carbon atoms of $R' + R_1 + R_2 + R_3$ does not exceed 7; or

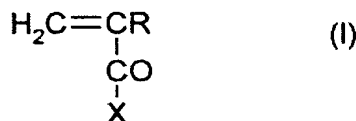
$-NH_2$, $-NHR_4$ and $-NR_4R_5$ groups wherein R_4 and R_5 are, independently of each other, linear or branched, saturated or unsaturated hydrocarbon-based radicals comprising 1 to 6 carbon atoms, with the proviso that the total number of carbon atoms of $R_4 + R_5$ does not exceed 7, and wherein R_4 and R_5 can be optionally be substituted with one or more of a halogen atom; a hydroxyl group ($-OH$); a sulphonic group ($-SO_3^-$); a sulphate group ($-SO_4^-$); a phosphate group ($-PO_4H_2$); a primary amine group ($-NH_2$); a secondary amine group ($-NHR_1$), a tertiary amine group ($-NR_1R_2$) and quaternary amine ($-N^+R_1R_2R_3$) group, wherein R_1 , R_2 and R_3 are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon atoms, with the proviso that the sum of the carbon atoms of $R_4 + R_5 + R_1 + R_2 + R_3$ does not exceed 7;

- (ii) maleic anhydride,
- (iii) itaconic acid,
- (iv) vinylpyrrolidone,
- (v) styrene and its derivatives,
- (vi) dimethyldiallylammonium chloride,
- (vii) vinylacetamide,
- (viii) vinyl alcohol,
- (ix) vinyl acetate,
- (xi) vinyl ethers, and
- (xii) vinyl acetate derivatives.

48. (Previously Presented) The cosmetic composition according to Claim 46, wherein the molar mass of the units with an LCST of the polymer is from 1000 g/mol to 500 000 g/mol.

49. (Previously Presented) The cosmetic composition according to Claim 34, wherein the units with an LCST of the polymer comprise polyvinylcaprolactam or a copolymer of vinylcaprolactam and a vinyl monomer selected from the group consisting of
with a vinyl monomer selected from the group consisting of:

(i) vinyl monomers of formula (I):



wherein

R is H, -CH₃, -C₂H₅ or -C₃H₇ ; and

X is

alkyl oxide of -OR', wherein R' is a linear or branched, saturated or unsaturated hydrocarbon-based radical containing from 1 to 6 carbon atoms, optionally substituted with at least one halogen atom; a sulphonic group (-SO₃⁻), a sulphate group (-SO₄⁻), a phosphate group (-PO₄H₂); a hydroxyl group (-OH); a primary amine group (-NH₂); a secondary amine group (-NHR₁), a tertiary amine group (-NR₁R₂) or a group quaternary amine (-N⁺R₁R₂R₃) group, wherein R₁, R₂ and R₃ are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon atoms, with the proviso that the sum of the carbon atoms of R' + R₁ + R₂ + R₃ does not exceed 7; or

- -NH_2 , -NHR_4 and $\text{-NR}_4\text{R}_5$ groups wherein R_4 and R_5 are, independently of each other, linear or branched, saturated or unsaturated hydrocarbon-based radicals comprising 1 to 6 carbon atoms, with the proviso that the total number of carbon atoms of $\text{R}_4 + \text{R}_5$ does not exceed 7, and wherein R_4 and R_5 can be optionally be substituted with one or more of a halogen atom; a hydroxyl group (-OH); a sulphonic group (-SO_3^-); a sulphate group (-SO_4^-); a phosphate group ($\text{-PO}_4\text{H}_2$); a primary amine group (-NH_2); a secondary amine group (-NHR_1), a tertiary amine group ($\text{-NR}_1\text{R}_2$) and quaternary amine ($\text{-N}^+\text{R}_1\text{R}_2\text{R}_3$) group, wherein R_1 , R_2 and R_3 are, independently of each other, a linear or branched, saturated or unsaturated hydrocarbon-based radical comprising 1 to 6 carbon atoms, with the proviso that the sum of the carbon atoms of $\text{R}_4 + \text{R}_5 + \text{R}_1 + \text{R}_2 + \text{R}_3$ does not exceed 7;

- (ii) maleic anhydride,
- (iii) itaconic acid,
- (iv) vinylpyrrolidone,
- (v) styrene and its derivatives,
- (vi) dimethyldiallylammonium chloride,
- (vii) vinylacetamide,
- (viii) vinyl alcohol,
- (ix) vinyl acetate,
- (xi) vinyl ethers, and
- (xii) vinyl acetate derivatives.

50. (Previously Presented) The cosmetic composition according to Claim 49, wherein the molar mass of the units with an LCST is from 1000 to 500 000 g/mol.

51. (Previously Presented) The cosmetic composition according to Claim 34, wherein the proportion by mass of the units with an LCST of the polymer is from 5 to 70% relative to the polymer.

52. (Previously Presented) The cosmetic composition according to Claim 34, wherein the proportion by mass of the units with an LCST of the polymer is from 20 to 65% relative to the polymer.

53. (Previously Presented) The cosmetic composition according to Claim 34, wherein the proportion by mass of the units with an LCST of the polymer is from 30 to 60% relative to the polymer.

54. (Previously Presented) The cosmetic composition according to Claim 34, wherein the concentration by mass of polymer in the aqueous phase is from 0.1 to 20%.

55. (Previously Presented) The cosmetic composition according to Claim 34, wherein the concentration by mass of polymer in the aqueous phase is from 0.5 to 10%.

56. (Previously Presented) The cosmetic composition according to Claim 34, wherein the compound with an optical effect is selected from the group consisting of a filler, a pigment, a nacre, a tensioning agent, a matt-effect polymer, and a mixture thereof.

57. (Previously Presented) The cosmetic composition according to Claim 34, which is a dispersion.

58. (Previously Presented) The cosmetic composition according to Claim 34, further comprising an oily phase, wherein the oily phase is dispersed in the aqueous phase and is an oil-in-water emulsion.

59. (Previously Presented) The cosmetic composition according to Claim 58, wherein the aqueous phase further comprises an emulsifying surfactant.

60. (Previously Presented) The cosmetic composition according to Claim 34, wherein the aqueous phase further comprises a gelling agent in a concentration of from 0.01 to 5% by weight relative to the total weight of the composition.

61. (Previously Presented) The cosmetic composition according to Claim 34, wherein the aqueous phase constitutes a physiologically acceptable medium.

62. (Previously Presented) A method of reducing the tack of a film or deposit obtained from a composition with an optical effect, comprising combining at least one compound with an optical effect and a polymer comprising water-soluble units and units having in water a lower critical solution temperature LCST, the heat-induced demixing temperature in aqueous solution of said units with an LCST being from 5 to 40°C for a concentration by mass in water of from 1% to 25% of said units, wherein the polymer is a block polymer comprising blocks consisting of water-soluble units alternating with units with an LCST; or the polymer is a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts, the polymer optionally being partially crosslinked.

63. (Previously Presented) A method of maintaining the staying power of a film or deposit obtained from a composition with an optical effect, comprising combining at least one compound with an optical effect and a polymer comprising water-soluble units and units having in water a lower critical solution temperature LCST, the heat-induced demixing temperature in aqueous solution of said units with an LCST being from 5 to 40°C for a concentration by mass in water of from 1% to 25% of said units, wherein the polymer is a block polymer comprising blocks consisting of water-soluble units alternating with units with an LCST; or the polymer is a graft polymer whose backbone is formed from water-soluble units and bears LCST grafts, the polymer optionally being partially crosslinked..

64. (Previously Presented) The method according to Claim 63, wherein the staying power of said film or deposit is maintained when exposed to a hot and/or humid atmosphere.

65. (Previously Presented) The method according to Claim 64, wherein the relative humidity of the atmosphere is from 40 to 95%.

66. (Previously Presented) The method according to Claim 64, wherein the temperature of the atmosphere is from 25 to 45°C.

67. (Previously Presented) A method of fading out imperfections in the skin and/or concealing microreliefs, wrinkles, fine lines and/or pores of the skin, comprising applying the composition according to Claim 34 to the skin.

68. (Previously Presented) A method of making up the skin, the eyelashes, the lips and/or the hair, comprising applying the cosmetic composition according to Claim 34 to the skin, the eyelashes, the lips and/or hair.

69. (Previously Presented) A process for providing a matt appearance and/or to conceal defects in skin, comprising applying the cosmetic composition according to Claim 34 to the skin.

APPENDIX II (EVIDENCE)

None

APPENDIX III

RELATED APPEALS AND INTERFERENCES

An appeal of a final office action is pending in U.S. application serial no. 10/070,910, identified by Appellants as a related case in the filing of September 2, 2003 and cited by the Office in a provisional obviousness-type double patenting rejection. Otherwise, to the best of Appellants' knowledge, there are no other appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.